IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 2092 of 2005

AND

WRIT PETITION NO.2221 of 2005

WRIT PETITION NO : 2092 of 2005

Between:

Dr. J. Srinivasa Chary, S/o. Late Naraharichary, Senior Medical Officer, Government Homoeo Hospital, Ramanthapur, Hyderabad.

..... PETITIONER

AND

1 The State of A.P., represented by its Secretary, Health Medical and Family Welfare Department, Secretariat buildings, Saifabad, Hyderabad.
2 The State of A.P., represented by its Principal Secretary, Finance & Planning (Finance) Department, Secretariat buildings, Secretariat, Saifabad, Hyderabad.
3 The State of A.P., represented by its Principal Secretary, Panchayat Raj and Rural Development Department, Secretariat, Saifabad, Hyderabad.
4 The Commissioner/Director, Indian Medicine and Homoeopathy Department, Government of A.P., Market Street, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue a writ order or direction more particularly one in the nature of the Certiorari. a) Call for the records relating to and connected with the judgement and order render in O.A.No.3963 of 1999 by the A.P., Administrative Tribunal, dt. 30.9.2003 and quash the same holding it as unsustainable. b) Further direct the respondents to count the

service rendered by the petitioner as Rural Medical Officers Class-A prior to the service rendered by them as Medical Officers in the Indian Medicine and Homeopathy Department, Government of A.P., as qualifying service for payment of terminal benefits and on the above basis direct the respondents to compute and pay the terminal benefits such as pension, gratuity etc., to the petitioner herein.

Counsel for the Petitioner: MR.NUTY RAM MOHAN RAO

Counsel for the Respondents: GP FOR SERVICES I

WRIT PETITION NO : 2221 of 2005

Between:

1 Dr.K.Venkateswara Rao, s/o Sivaramakrishnaiah, Medical Officer, Government Ayurvedic Dispensary, Chinaparimi (Post), Chunduru Mandal, Guntur District,
2 Dr.V.T.Purushotham, s/o Ramanujacharyulu, Medical Officer, Government Ayurvedic Dispensary, Kaza (Post), Movva (Mandal), Krishna District.
3 Dr.N.Suryavathi, d/o N.Veeranna, Medical Officer, Government Ayurvedic Dispensary, Gollalakoderu, Bhimavaram Mandal, West Godavari District.
4 Dr.H.V.Veram Raju, s/o Sri Venkateswarlu, Medical Officer, Government Ayurvedic Hospital, Vijayawada, Krishna District.
5 Dr.P.Venkatramaiah, s/o Singaiah, Medical Officer, Government Ayurvedic Dispensary, Piduguralla (Post) & (Mandal) Guntur District.
6 Dr.T.Nancharaiah, s/o Anjaneyulu, Medical Officer, Government Ayurvedic Dispensary, Peddavaram, Nandigama Mandal, Krishna District.
7 Dr.M.Ranga Rao, s/o Satyanarayana, Medical Officer, Government Ayurvedic Dispensdary, Paritala, Kanchikacharla Mandal, Krishna District.
8 Dr.N.Ravi Kumar, s/o M.Satyanarayanacharyulu, Medical Officer, Government Ayurvedic Dispensary, Anantavaram Post, Veddanapudi Mandal, Prakasam District.
9 Dr.S.Balareddy, s/o Ramireddy, Medical Officer, Government Ayurvedic Dispensary, Mogalluru Post, Venigandla Mandal, Prakasam District.
10 Dr.N.V.Ramacharyulu, s/o Satyanarayanacharyulu, Medical Officer, Government Ayurvedic Dispensary, Jarugumalli Post and Mandal, Prakasam District.
11 Dr.K.Lakshmi Sekhar Babu, s/o Prakasam, Medical Officer, Government Ayurvedic Dispensary, Jaladanki (Post & Mandal), Nellore District.
12 Dr.B.Papaiah, s/o Venkata Subbarayudu, Medical Officer, Government Ayurvedic Dispensary, Jampali Post, Vemuru Mandal, Guntur District.
13 Dr.P.Nageswara babu, s/o Nasaraiah, Inspecting Medical Officer, Commissionerate of Indian Medicine and Homoeopathy Department, Opp;Regional Passport Office, Secunderabad.
14 Dr.V.Siva Sankar Rao, s/o Janakiramaiah, Assistant Professor,

Government Homoeopathy College, Gudiwada, Krishna District.
15 Dr.P.Bheemeswara Rao, s/o Venkata Narayana, Retired Senior Medical Officer, Government Homeo Dispensary, Ananthapur, Anantapur District.
16 Dr.N.Koteswara Rao, s/o Ananda Rao, Retired Senior Medical Officer, Government Homeo Dispensary, Ameerpet, Hyderabad.
17 Dr.V.A.Nagaraja, s/o late Dr.V.Anjaneyulu, Assistant Professor, Government Homeopathy College, Cuddapah, Cuddapah District.
18 Dr.D.Singaracharyulu, s/o Raghavacharyulu, Medical Officer, Government Ayurvedic Dispensary, Bhattiprolu (Post) & (Mandal), Guntur District.
19 Dr.K.Erappa, s/o K.Nagappa, Medical Officer, Government Ayurvedic Dispensary, Sankargal (Post), Gudibanda (Mandal), Anantapur District.

..... PETITIONERS

AND

1 The State of Andhra Pradesh represented by its Secretary, Health, Medical and Family Welfare Department, Secretariat Buildings, Saifabad, Hyderabad.
2 The State of Andhra Pradesh, represented by its Principal Secretary, Finance & Planning (Finance) Department, Secretariat Buildings, Saifabad, Hyderabad.
3 The State of Andhra Pradesh, represented by its Principal Secretary, Panchayat Raj and Rural Development Department, Secretariat Buildings, Saifabad, Hyderabad.
4 The Commissioner/Director, Indian Medicine and Homeopathy Department, Government of Andhra Pradesh, Market Street, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction more particularly one in the nature of writ of certiorari: a) call for the records relating to and connected with the judgment and order rendered in O.A.No.1580 of 2000 by the Andhra Pradesh Administrative Tribunal, dt.30-9-2003 and quash or set aside the same holding it as unsustainable. b) Further direct the respondents to count the service rendered by the petitioners as Rural Medical Officers Class-A to the service rendered by them as Medical Officers in the Indian medicine and Homeopathy Department, Government of Andhra Pradesh as qualifying service for payment of terminal benefits and on the above basis direct the respondents to support and pay the terminal benefits to the petitioners herein.

Counsel for the Petitioners: MR.NUTY RAM MOHAN RAO

Counsel for the Respondents: GP FOR SERVICES I

The Court made the following:

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ORAL ORDER: (per GB.J.)

Both the Writ Petitions can be disposed of by a common order as the subject matter in the Writ Petitions is one and the same.

2. The petitioners are the applicants before A.P. Administrative Tribunal (for short Tribunal) in O.A.Nos.3963 of 1999 and 1580 of 2000, dated 30.9.2003. They filed the O.As., seeking direction to the respondents to count the service put in by them as Rural Medical Practitioners for purpose of granting terminal benefits and automatic advancement scheme and all other retirement benefits. It is the case of the petitioners that they were initially appointed as Rural Medical Practitioners and they have been working as such for number of years, and therefore they have been making representations to the Government to regularize their services. However, the Government, after considering the matter, issued G.O.Ms.No.503, Health, Medical and Family Welfare (I.2) Department, dated 16.11.1990, wherein it was ordered that the Rural Medical Practitioners should be appointed on temporary basis subject to their fitness and selection and in pursuance of the said G.O., the petitioners came to be appointed on temporary basis in the scale of Rs.1550-3050. But, however, the grievance of the petitioners is that the services rendered by them as Rural Medical Practitioners was not being counted and with the result they will not be eligible to get any retirement benefits, such as pension etc., and therefore they sought for appropriate directions. It is also their case that in respect of similarly situate persons, the Government has individually relaxed the conditions and counted their service for purpose of retirement benefits. When the cases of

employees who were appointed in the consolidated posts, such as P.E.Ts., were counted, the service put in by the petitioners on casual basis also should be counted for purpose of pension. The Tribunal, however, after considering the matter, dismissed the above O.As. Against the said order, the present Writ Petitions have been filed.

3. The learned counsel for the petitioners submits that the petitioners have been serving the Government for more than 1.1/2 decades and considering the hardship experienced by them they came to be appointed on temporary basis as Rural Medical Practitioners by virtue of G.O.Ms.No.503, dated 16.11.1990, and in similar identical cases the Government considered and granted continuity of service for purpose of retirement benefits and therefore the order passed by the Tribunal is not sustainable and the same is liable to be set aside and appropriate directions in this regard should be issued.

4. We have heard the learned Government Pleader for Services-I also.

5. The only issue that arises for consideration is whether the services rendered by the petitioners as Rural Medical Practitioners can be counted for purpose of retirement benefits along with the period during which they were regularly appointed by virtue of G.O.Ms.No.503, dated 16.11.1990.

6. In GO.Ms.No.503, dated 16.11.1990 there is no mention with regard to the services rendered by the petitioners prior to their selection as Rural Medical Practitioners. We also do not find any such Officer, who was appointed under G.O.Ms.No.503, dated 16.11.1990, was given the benefit of past service. Even though some of the instances were brought to the notice of the Tribunal relating to grant of past service for purpose of pension and other retirement benefits in some other Department, the Tribunal has not accepted the same and held that they are not entitled for reckoning the service put in by them as Rural Medical Practitioners. Para 10 of the order of the

Tribunal is relevant for this purpose, which is extracted below:

> "It is also not in dispute that the applicants were under agreement and their services, therefore, are governed by the bonds executed by them in this agreement. Their appointment was not in regular Government department nor their appointment as RMPs was made by any governmental agency. They were appointed in the local bodies like Mandal Parishads and Zilla Parishads. Merely because for such A-Class RMPs, selections were made, it cannot be said that they belong to Government department. Even in local bodies, selection process has to be gone through for every post including A-Class RMPs. Also mere possession of the qualification does not render them automatically eligible for appointment. As was done by the Government in Teachers' Association through GO.Ms.No.503 their cases will have to be considered for appointment only through the channel of APPSC or if necessary by excluding them from the purview of the APPSC by the Government. Also, the orders issued by the Government in respect of the applicants are only for absorption of the applicants. Prior to their absorption, the applicants could work only as RMPs. Eligibility for pension arises only according to the A.P. Revised Pension Rules for the service rendered by a Government servant. Prior to their absorption the applicants are not in Government employment. For the first time they got into Government service in January, 1991. Also it has to be borne in mind that even the Hon'ble High Court in their judgment had not ordered for their absorption for considering the services of A-Class RMPs, during which period they had drawn only a subsidy of Rs.1400/- per month as released by the Government as grant-in-aid. Thus, the above facts make it abundantly clear that only from the date of their absorption as Medical Officers, their service will be counted towards Government service. The earlier service rendered by them as A-Class RMPs cannot be counted as Government service and there is no rule or authority relied upon by the applicants for their claim. The only authority relied upon by them is the judgment of the High Court and even in this judgment the High Court did not order for such absorption with retrospective effect, even though subsequently cases were filed and disposed of. The High Court only directed for their appointment, with or without the agency of APPSC by conferring eligibility on the applicants for applying for the same. In other words the High Court held

> clearly that the applicants should go through the process of APPSC for selection and on such selection, they would be eligible for Medical Officers in Government Dispensaries newly sanctioned. The cases of employees, who belong to other categories like Teachers, stand on altogether a different footing as they were appointed by governmental authorities. Also the analogy drawn from and comparison made with Local Fund Dispensaries, does not hold good in respect of the applicants, as the Medical Officers in Local Fund Dispensaries stand on a different footing".

7. The learned counsel for the petitioners Mr.Nooty Ram Mohan Rao, however, tried to convince this Court that even though the petitioners serving the Government for nearly two decades, they will not get pension on the ground that their service prior to their appointment is not counted.

8. We cannot adjudicate this matter with reference to the contention raised by the learned counsel for the petitioners. Firstly, no right is created under any G.Os., issued by the Government from time to time. Under G.O.Ms.No.503, dated 16.11.1990 the petitioners were only directed to be considered for regular appointments subject to certain conditions, but treatment of period prior to their appointment has not been considered. In such a situation it would not be appropriate for this Court to issue direction with regard to the counting of service prior to their appointment as Government servants. It is for the Government to take a decision keeping in view the similar instances and also the cases of Teachers and other staff who worked on casual basis and subsequently regularized in service by treating their casual service as regular service for purpose of getting retirement benefits. Under these circumstances, we do not find any flaw in the order of the Tribunal.

9. Accordingly, both the Writ Petitions are dismissed. However, we leave it open to the petitioners to make a representation to the Government bringing to its notice the hardship that may be caused if their past service is not counted and with reference to the settled matters, within a period of six (06) weeks from the date of receipt of a

copy of this order, and the same may be considered and disposed of by the Government within a period of six (06) weeks thereafter. No costs.

(G.BIKSHAPATHY, J.)

2nd March, 2005.

(P.S.NARAYANA, J.)

SSR

To

1 The State of A.P., represented by its Secretary, Health Medical and Family Welfare Department, Secretariat buildings, Saifabad, Hyderabad.
2 The State of A.P., represented by its Principal Secretary, Finance & Planning (Finance) Department, Secretariat buildings, Secretariat, Saifabad, Hyderabad.
3 The State of A.P., represented by its Principal Secretary, Panchayat Raj and Rural Development Department, Secretariat, Saifabad, Hyderabad.
4 The Commissioner/Director, Indian Medicine and Homoeopathy Department, Government of A.P., Market Street, Secunderabad.

5 The Registrar, A.P. Administrative Tribunal, Hyderabad.

6 2 CCs to G.P. for Services-I, High Court of A.P. Hyderabad. (OUT)

7 2 CD copies

8 1 CC to MR.NUTY RAM MOHAN RAO

*Form-NIC-OGS/WP{**JGK**}*